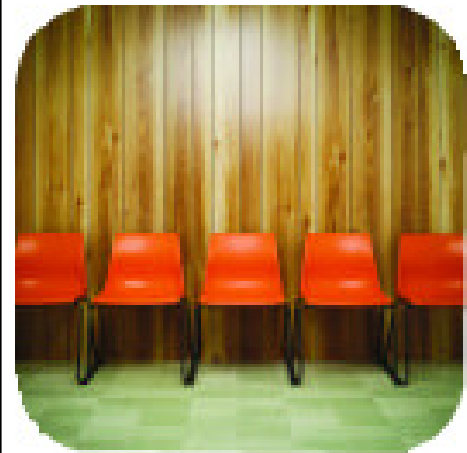




The risks with Email

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Legal risks with email

Cause

- Informality and ease of communication
- Causes lack of thought or adherence to processes
- Lack of legal or technical input
- Email “conversation” is in isolation

Legal Status

Contractual risk

Misleading and deceptive conduct

Intellectual Property

Data Recovery (Evidence collection)

Tips

Questions

Legal Status with Email

Email is another business document

- Recognised by Courts and legislation
- Discoverable and able to be subpoenaed

Contracts can be formed by email

Terms can be defined by email

- Entire contract created by email
- Other oral or written contracts can be “enhanced” by emails
- Oral or written contracts can be clouded or interpreted by emails

Contracts can be breached by email

Contractual Issues

Intention to create a contract?

- By your staff?
- By the customer?

Content of contractual terms

- Does the email cover all your usual terms?
- Always impose your terms of trade
- Deny customer's terms of trade
- Last shot rule

Informality and ease of communication

- Causes lack of thought or adherence to processes
- Email "conversation" is in isolation

Misleading and Deceptive Conduct

Any representation that may mislead or deceive

- Writing – includes email
- Silence

Pre or post contractual formation

- Quality, purpose representations
- Delivery dates
- Repair, warranty

Silence can be a representation

- Ignoring or failing to reply to an email
- Was it even received?

IP and Trade Secrets

Easy of copying and removal of information

- Technical reports, drawing and information
- Customer, supplier lists and records

Speed of dissemination

- Once sent, practically irretrievable

Disgruntled and resigning employees

- Email home or to anonymous mail box
- Use of email in breach of employee's duties

Data/Evidence recovery

Court process

- General proceedings – 4-6 weeks
 - Cost, format, selection
- Injunctions – about 2 days
- Third party subpoenas

ACCC questions and section 155 examinations

- Examination and production under oath

Email storage and searching

- Emails critical to prove or deny conduct
- Non-compliance can be contempt
- Speed and ease of retrieval critical to minimise ongoing damage



Tips and Lessons from Examples

Practical Tips

- Archive and manage emails
- Educate employees about proper email use and procedures
- Limit email access
- Physical barriers better than contractual ones
- Manage terminations and resignations

Good corporate governance

- Employee email policies and privacy handling
- Tools available
- Review and audit processes
- Feed back into educational programs

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